No. 10,501

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

CHARLES GROMER DICKINSON and DORIS MAY DICKINSON (his wife), WILLIAM KEMP, and L. K. FEREVA, individually and doing business under the firm name and style of "Fereva Chevrolet Company",

Appellants,

vs.

GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LTD.,

Appellee.

BRIEF OF APPELLANT FEREVA.

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STATEMENT OF JURISDICTION.

The complaint in the District Court alleged that plaintiff was a corporation organized and existing under the laws of Scotland and that each of the four defendants was a citizen of the State of California. (T. 2-3.) The suit was of a civil nature (Judicial Code, sec. 274D, 28 USCA, sec. 400) and the sum in controversy was alleged to exceed $3000 exclusive of interest and costs (T. 2-3). These allegations were admitted by the answers. (T. 14, 22.) The District

Court found them true. (T. 88-89.) Jurisdiction of the District Court is therefore sustained by section 24 of the Judicial Code. (28 USCA, sec. 41.)

The final judgment of the District Court was entered against the defendants on October 9, 1942. (T. 98-101.) Their motion for new trial was served and filed on October 15, 1942 (T. 102-107) and denied on February 23, 1942 (T. 107-108). Their notice of appeal was filed May 21, 1942. (T. 108-109.) Jurisdiction of this court upon appeal to review the said judgment is therefore sustained by the Judicial Code and the Rules of Civil Procedure. (Judicial Code, sec. 128, 28 USCA, sec. 225, Rules of Civil Procedure, Nos. 73 and 75, 28 USCA, following section 723c.)

STATEMENT OF THE CASE.

Plaintiff insurance company invoked the Federal Declaratory Judgment Act (Judicial Code, sec. 274D, 28 USCA, sec. 400) to obtain a declaration of its rights under a policy of automobile liability insurance it had issued to defendant L. K. Fereva on December 6, 1939. (T. 2-13.) Other defendants in the action were Charles and Doris Dickinson and William Kemp who were injured when the automobile covered by the policy was involved in an accident on February 25, 1940. (T. 4-5.) A copy of the policy was annexed to the complaint. (T. 4, 13, 119-140.) One of the terms of the policy required the insurer to pay on behalf of the insured any damages because of bodily injuries sustained by any person caused by accident

arising out of the operation of the automobile. (T. 122-123.) Another term of the policy required the insurer to defend any suit against the insured for such damages. (T. 124.) Other terms of the policy required written notice of an accident to be given to the insurer or any of its authorized agents "as soon as practicable" (T. 131), and entitled any injured person who had secured judgment against the insured "to recover under the terms of the policy in the same manner and to the same extent as the insured." (T. 132.)

The complaint, filed February 7, 1941 (T. 3), alleged the occurrence of the accident on February 25, 1940, and resulting injury therefrom to the defendants Dickinson and defendant Kemp (T. 4-5); failure to give notice thereof to the insurer until April 26, 1940 (T. 5); commencement of an action for damages by defendants Dickinson against the insured on April 12, 1940, and the securing of judgment therein against the insured for $5000 and costs on December 16, 1940 (T. 5-7); commencement of an action for damages by defendant Kemp against the insured on November 30, 1940, for $7905 and costs, and the pendency of the action (T. 6-7); and defense of such actions by the insurer under reservation of rights. (T. 9-10.) The complaint further alleged that the "actual controversy" between the parties consisted in the assertion by defendants that plaintiff was obligated under its policy to defend said actions and to pay any judgment secured therein, and the assertion by plaintiff that it was released from all liability and obligations under the policy because the insured failed to give to the

insurer notice of the occurrence of said accident until April 26, 1940. (T. 7-9.) Plaintiff prayed for a declaration of nonliability and an injunction against the assertion of liability by defendants. (T. 12-13.)

A joint answer was filed by defendants Dickinson and defendant Kemp on February 27, 1941. (T. 14-16, 21.) They asserted that plaintiff was liable under its said policy, and upon information and belief alleged that the insured notified the insurer of the occurrence of the accident within 15 days thereafter. (T. 15.) They denied that the insurer defended the action under a reservation of rights. (T. 16.) A cross-claim was also filed by defendants Dickinson. (T. 17-21.) They alleged the securing of the judgment against the insured and the liability of the insurer for the payment thereof under its policy. The separate answer of defendant Fereva paralleled the answer of his co-defendants with the exception that he alleged positively that he notified the insurer of the occurrence of the accident within 15 days thereafter. (T. 22-25.) Plaintiff's answer to the cross-claim was the equivalent of a general denial. (T. 25-26.)

On December 22, 1941, defendants Dickinson and defendant Kemp filed an amendment to their answer and set up an "Affirmative, Separate and Distinct Defense". (T. 28-37.) Upon information and belief they alleged: at the time of the accident the insured, defendant Fereva, was an authorized agent of the insurer (T. 29-31); the practice and custom between the insurer and its said agent was for the agent to give oral notice of an accident (T. 31-32); according to

such practice and custom oral notices were given by said agent to R. F. Urquhart, the District Representative of the insurer at Sacramento, and the insurer was estopped from denying the authority of Urquhart to receive oral notice and estopped from asserting that written notice was not given (T. 32-33); within 15 days after the occurrence of the accident of February 25, 1940, the insured gave oral notice thereof to Urquhart (T. 33-34); said oral notice was given by the insured as authorized agent of the insurer (T. 34-35); the insurer waived the terms of the policy requiring written notice of the occurrance of an accident (T. 35-36); the insurer was estopped as to defendants Dickinson and defendant Kemp from setting up the term of the policy requiring written notice (T. 36).

A jury trial was demanded and a jury was empaneled and sworn to try the cause on December 8, 1941 (T. 115). The jury charge covers 19 pages of the transcript. (T. 400-419.) Three forms of verdict were prepared for the convenience of the jury: First, a general verdict for the plaintiff; second, a general verdict for the defendants Fereva and Kemp; third, a verdict for the defendants Dickinson against the plaintiff insurance company for the amount of the judgment they secured against Fereva together with interest and costs. (T. 418-419.)

The verdicts returned by the jury were in favor of defendants and on the second and third forms mentioned. But the trial court rejected these verdicts. It treated them as purely advisory. (T. 40.) It rejected findings of fact and conclusions of law pro-

posed by defendants in accordance with the verdicts and refused to enter judgment for defendants in accordance with the verdicts. (T. 45-81.) Contrary to the verdicts of the jury, it made findings against defendants on all issues (T. 87-97), ordered entry of judgment for plaintiff (T. 40), and entered judgment for plaintiff (T. 98-101).

Succinctly stated, the questions involved on the appeal by the defendant Fereva and the manner in which they are raised, may be summarized as follows: (1) the denial of his right to jury trial, raised by the rulings of the court rejecting the jury verdict in his favor, treating the verdict as purely advisory, making findings of fact and conclusions of law in favor of plaintiff, ordering entry of judgment for plaintiff, and entering judgment for plaintiff, contrary to the said verdict; (2) the sufficiency of the evidence to support the findings, raised by Rule 52 (a) of the Rules of Civil Procedure; and (3) the sufficiency of the findings to support the conclusions of law, raised by the contents thereof.

SPECIFICATION OF ERRORS.

1. The trial court erred in rejecting the verdict of the jury in favor of defendant Kemp.

2. The trial court erred in rejecting findings of fact and conclusions of law proposed by said defendant in accordance with said jury verdict.

3. The trial court erred in refusing to enter judgment for said defendant in accordance with said verdict.

4. The trial court erred in making findings of fact and conclusions of law contrary to said jury verdict.

5. The trial court erred in ordering entry of judgment contrary to said jury verdict.

6. The trial court erred in entering judgment contrary to said jury verdict.

7. The trial court erred in finding that the plaintiff insurer was released of all obligations and liability under its policy of insurance so far as the accident of February 25, 1940 is concerned by reason of failure of the insured to notify plaintiff that any such accident had occurred until sixty days thereafter, for the following reasons: 1. The evidence established that notice thereof had been given in accordance with law; 2. The evidence established as a matter of law that notice thereof had been given in accordance with the terms of the policy; 3. The evidence established as a matter of law that the insurer had waived the terms of the policy respecting notice; 4. The evidence established as a matter of law that the insurer was estopped from asserting noncompliance with the terms of the policy respecting notice; 5. The evidence failed to establish that the insurer was prejudiced by default, delay, or defect in notice.

8. The trial court erred in finding that the insurer had not waived the terms of the policy respecting notice of the occurrence of the accident, for the reason

that the evidence established such waiver as a matter of law.

9. The trial court erred in finding that the insurer was not estopped from asserting that notice of the occurrence of the accident had not been given in accordance with the terms of the policy, for the reason that the evidence established such estoppel as a matter of law.

10. The trial court erred in its conclusions of law that plaintiff should have judgment and that defendants should take nothing, for the following reasons: 1. There is no finding that notice of the occurrence of the accident of February 25, 1940, was not given to the insurer in accordance with law; 2. There is no finding that the insurer was prejudiced by default, delay, or defect in notice.

ARGUMENT OF CASE.

A. SUMMARY.

The case was one in which the defendant Fereva had the absolute right of trial by jury. He demanded trial by jury and trial by jury was had. The verdict of the jury was in his favor and the implied findings of the jury were therefore in his favor on all issues. But the trial court rejected the verdict on the theory that it was purely advisory. Instead of entering judgment for defendant Fereva in accordance with the verdict, the court made findings contrary thereto and contrary to the findings thereby implied

and ordered and entered judgment for plaintiff. Defendant Fereva was thereby deprived of the right of trial by jury safeguarded by the Seventh Amendment to the Constitution of the United States. Because of the denial of the right of trial by jury the judgment against the defendant Fereva should be reversed.

Even if the case be regarded as one in which the defendant Fereva was not entitled to trial by jury as a matter of right, still the essential findings upon which the judgment rests are not supported by substantial evidence. The findings are to the effect that the insurer is not liable to persons injured in the accident of February 25, 1940, because the insured did not comply with the policy terms requiring him to give written notice of the occurrence of an accident to the insurer "or any of its authorized agents as soon as practicable". In California, however, the giving of notice in such cases is regulated by statute. The statute and not the policy term is therefore controlling. Due notice in accordance with the statute was given. The insured was also an authorized agent of the insurer. If he regarded the accident as a trivial one, notice thereof to the insurer was not necessary. If he failed to give notice to the insurer, then his principal, the insurer, and not those injured in the accident should suffer. A custom and practice existed between the insurer and its said authorized agent whereby he would receive oral notices of the occurrence of accidents and orally communicate them to a District Representative of the insurer at Sac-

ramento. When an oral notice was thus communicated to the insurer under the custom and practice it would then obtain such written notice and information as it desired. There was no time limit within which such authorized agent was to make such communications and there was no time limit within which the insurer would respond. This custom and practice was followed in giving notice of the occurrence of the accident of February 25, 1940. There was a waiver by the insurer of the terms of the policy respecting notice. The insurer was estopped from asserting such terms. The insurer was not prejudiced by default or delay in giving notice. The findings essential to a judgment against the defendant Fereva are, as a matter of law, not supported by substantial evidence.

There was no finding of noncompliance with the California statute governing notice. There was no finding that default or delay in giving notice had prejudiced the insurer. The conclusions of law, therefore, are not supported by the findings.

B. POINTS OF LAW AND FACT.

1. THE DEFENDANT FEREVA WAS DENIED THE RIGHT OF TRIAL BY JURY.

This subdivision presents the broad question whether the defendant Fereva was denied the right of trial by jury. It covers Specification of Errors numbered 1 to 6 inclusive. It embraces the matters

designated as points VIII and X in the Statement of Points on Appeal. (T. 426-427.) The above heading has been adopted for convenience in argument. The subheadings adhere to the language of the specification.

(a) Specification of Error No. 1. The trial court erred in rejecting the verdict of the jury in favor of defendant Fereva.

Jury trial was duly demanded and a jury was empaneled and sworn on December 8, 1941, to try the cause (T. 115). Responsive to one of the forms submitted to it by the court (T. 418-419), the jury, on December 29, 1941, returned a verdict finding in favor of defendant Fereva (T. 42). The trial court rejected the verdict. It treated it as purely advisory. (T. 40.) It made findings contrary to the implied findings by the jury and entered judgment contrary to the verdict. No motion for directed verdict had been made by plaintiff (T. 397), and therefore the power of the court under Rule 50 of the Rules of Civil Procedure to reserve legal questions for determination after the submission of a cause to the jury, is not involved.

The question of the right of trial by jury in actions under the Federal Declaratory Judgments Act (Judicial Code, sec. 274D, 28 USCA, sec. 400) was fully considered by this court in *Pacific Indem. Co. v. McDonald,* 107 F. 2d 446. That case is decisive to the effect that all defendants in the present action had the absolute right of trial by jury as safeguarded by the Seventh Amendment to the Constitution of the United States. If the trial judge was dissatisfied with the verdict of the jury, its corrective power was

limited to granting a new trial. (*Walker v. New Mexico & S.P.R.Co.*, 165 US 593, 596, 41 L.Ed. 837, 17 SCt 421, 422.) When the court rejected the verdict of the jury in this action there was a plain infraction of the said Amendment.

(b) Specification of Error No. 2. The trial court erred in rejecting findings of fact and conclusions of law proposed by said defendant in accordance with the jury verdict.

Such findings and conclusions were proposed (T. 45-74) and lodged on January 8, 1942 (T. 74). They were rejected by the court. (T. 421.) This was error, and a deprivation of appellant's right of trial by jury.

(c) Specification of Error No. 3. The trial court erred in refusing to enter judgment for said defendant in accordance with said verdict.

An appropriate judgment was submitted. (T. 74-81.) The trial court refused to enter it. (T. 40.) This was error, and a deprivation of appellant's right of trial by jury.

(d) Specification of Error No. 4. The trial court erred in making findings of fact and conclusions of law contrary to said jury verdict.

Findings of fact and conclusions of law to that effect were made by the court. (T. 87-97.) The error is palpable. The deprivation of appellant's right of trial by jury is manifest.

(e) Specification of Error No. 5. The trial court erred in ordering entry of judgment contrary to said jury verdict.

Jury verdict was returned on December 29, 1941. (T. 42.) No judgment was entered until October 8,

1942. (T. 98-101.) On September 24, 1942, the court ordered that judgment be entered against this defendant. (T. 40.) The jury verdict had been in his favor. This was error. This was deprivation of appellant's right of trial by jury.

(f) Specification of Error No. 6. The trial court erred in entering judgment contrary to said jury verdict.

Deprivation of appellant's right of trial by jury became complete by entry of judgment on October 8, 1942. (T. 98-101.) The jury verdict was in favor of this defendant on all issues. The judgment entered was to the contrary.

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2. THE JUDGMENT AGAINST THIS DEFENDANT IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

This subdivision presents the broad question of the sufficiency of the evidence. It covers Specification of Errors numbered 7 to 9 inclusive. It embraces the matters designated as points I, II, III, IV, V, VI, VII, and IX in the Statement of Points on Appeal. (T. 424-427.) The heading has been adopted for convenience. The subheadings adhere to the language of the specification. The arguments thereunder will become moot if the court is of the opinion that this defendant was denied the right of trial by jury.

(a) **Specification of Error No. 7. The trial court erred in finding that the plaintiff insurer was released of all obligations and liability under its policy of insurance so far as the accident of February 25, 1940 is concerned by reason of failure of the insured to notify plaintiff that any such accident had occurred until sixty days thereafter, for the following reasons: 1. The evidence established that notice thereof had been given in accordance with law; 2. The evidence established as a matter of law that notice thereof had been given in accordance with the terms of the policy; 3. The evidence established as a matter of law that the insurer had waived the terms of the policy respecting notice; 4. The evidence established as a matter of law that the insurer was estopped from asserting noncompliance with the terms of the policy respecting notice; 5. The evidence failed to establish that the insurer was prejudiced by default, delay, or defect in notice.**

Finding No. 6 contains the finding above mentioned. (T. 90-91.) The finding that notice was not given until 60 days after the accident was repeated in Findings Nos. 14 and 15. (T. 95-97.)

1. There are certain paramount statutes in California on the question of notice. They read:

Insurance Code, sec. 551. "Except in the case of life, marine, or fire insurance, notice of an accident, injury, or death may be given at any time within twenty days after the event, to the insurer under a policy against loss therefrom. In such a policy, no requirement of notice within a less period shall be valid."

Insurance Code, sec. 553. "All defects in a notice of loss, or in preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived."

Insurance Code, sec. 554. "Delay in the presentation to an insurer of notice or proof of loss

is waived, if caused by an act of his, or if he omits to make objection promptly and specifically upon that ground."

These sections, it is obvious, controlled the policy term requiring written notice "as soon as practicable". They permit oral notice to be given at any time unless the insurer promptly and specifically objects to defect or delay in notice.

The jury verdict implied a finding that the insured gave oral notice to the insurer within 3 to 7 days after the accident and that no objection to the form of notice was made by the insurer. (T. 327-329, 337-340.) The jury verdict, in other words, implied a finding that notice to the insurer had been given in accordance with law.

In April, 1940, the insured delivered the summons and complaint in the Dickinson action to the insurer. No objection was then made upon the ground that notice of the accident was not in writing or upon the ground of delay in presentation of notice. (T. 315-331.) The insured was referred to an agent of the insurer in Sacramento for investigation of the facts of the accident. In the office of this investigator a written notice of accident was prepared and signed on April 26, 1940. (T. 158-159.) The insurer did not then object to the written notice upon the ground of delay. (T. 204.) Three days later the Claims Department of the insurer wrote a letter to the insured stating that the Dickinson action would be defended under a reservation of rights. (T. 166-167.) The insurer did not then deny liability under its policy. Liability

was not denied by the insurer until January 28, 1941. (T. 171-172.) The undisputed evidence therefore confirms the implied finding of the jury that notice to the insurer was given in accordance with law. The finding under discussion is therefore without evidentiary support.

2. The policy terms required written notice of any accident to be given to the insurer or any of its authorized agents as soon as practicable.

But policy terms thus phrased do not require an insured to give notice of every accident, nor do the words "as soon as practicable" necessarily refer to the date of an accident. An insured is not required to give notice of an apparently trivial accident resulting in apparently trivial injury. In such cases, policy terms thus phrased are complied with if notice is given within a reasonable time after the insured becomes aware of the serious aspect of the injury suggestive of a possible claim for damages under the policy. This is the law as approved by this court in *Ohio Casualty Co. v. Rosaia,* 74 F. 2d 522, 533-4. The higher courts in California have not announced the law to the contrary.

As the record has it, the insured regarded the accident as apparently trivial with apparently trivial injury resulting. (T. 204, 328-9.) And as it further appears that he gave written noice of the accident within a reasonable time after the contrary became apparent, it follows that he fully complied with the policy terms respecting notice.

Moreover, the insured in this case was also an authorized agent of the insurer. (T. 184-185.) He was authorized to transact all matters subsequent to the execution of a policy of insurance and arising out of it. (Insurance Code, secs. 31, 35.) He had notice of the accident and full discretion to act. If he regarded the accident as a trivial one of which notice was not necessary until after the Dickinsons served their summons and complaint upon him, then the insurer and not this defendant should suffer. The pertinent maxim is contained in section 3543 of the California Civil Code to the effect that "Where one of two innocent persons must suffer by the acts of a third, he, by whose negligence it happened, must be the sufferer". Therefore, the written notice given by the insured on April 26, 1940, was a full compliance with the policy terms respecting notice.

3. The sections of the Insurance Code of California on waiver have already been quoted. Under quoted section 554 delay in giving notice is waived if caused by an act of the insurer. Waiver under the section is clearly manifested in the present case. It resulted from the action of the insurer in establishing and following a custom and practice whereunder it accepted and acted upon oral notices given by this appellant without question as to form or timeliness. The evidence unmistakably shows that this appellant was the statutory agent of the insurer in a district over which one Urquhart presided as special representative of the insurer. (T. 295.) The evidence also unmistakably shows that stickers which the insurer annexed to policies issued at the instance of this

appellant carried the information that Urquhart was the District Representative of the insurer and that notice of loss was to be given to him. (T. 308-309.) And the evidence further unmistakably shows that when this appellant or other insureds under such policies had an accident it was the custom and practice of this appellant to give oral notice thereof to Urquhart, the latter would then refer the matter to one Henretty, an investigator, and the insured would then act upon oral notice thus given. (T. 315-318, 322-324.) This appellant followed this custom and practice in giving notice of the accident of February 25, 1940. (T. 327-329, 331.)

To repeat, waiver under the said section is therefore clearly manifested in the present case. The California law on the subject is summed up in *Ramirez v. United Firemen's Ins. Co. of Philadelphia,* 46 Cal. App. 451, 454, 189 P. 309, as follows:

> "The general rule seems to be, however, that any act or series of acts upon the part of the insurer which tend to create a belief in the mind of the claimant under the policy that notice need not be given, or that proofs of loss will be unnecessary, will operate as a waiver, and release such claimant from a compliance with the provision."

Waiver under quoted sections 553 and 554 is confirmed by other aspects of the evidence. Urquhart, the special representative, to whom the insurer directed that notice of loss be given, made no objection to oral notice of the accident. On the contrary, he accepted such notice and acted upon it. He referred the matter

to Henretty, an investigator. This was plainly a waiver under said sections. This, moreover, was plainly a waiver under the decision in *Estrada v. Queen Insurance Co.,* 107 Cal. App. 504, where it was said, at page 510:

> "By making no objection on account of the absence of notice and preliminary proof, and going on to a matter which was concerned with the payment of the claim, and had no connection with complying with the provision calling for preliminary proof of loss within sixty days, we think the company, through its authorized agent, waived this provision and that the insured had a right to rely upon this manifestation of intention to dispense with the preliminary formalities."

4. The law of equitable estoppel in California, as declared by the court in *Bank of America v. National F. Corp.,* 45 Cal. App. 2d 320, 328, 114 P. 2d 149, is as follows:

> ". . . it must be remembered that the whole office of an equitable estoppel is to protect one from a loss which but for the estoppel he could not escape. The whole vital principle of equitable estoppel is that he who by his language or conduct leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectation upon which he acted. Such a change of position involves fraud and falsehood and the law abhors both. The doctrine of estoppel is applied when necessary to prevent the acts of a party from operating as a fraud upon one who has been deliberately led to rely upon them."

What has been said about waiver, impels a conclusion that the insurer is estopped from asserting noncompliance with the policy terms respecting notice.

5. The court made no finding that the insurer was prejudiced by default, delay, or defect in notice. Under the California law the burden was upon the insurer to prove such prejudice, and in the absence of such proof violation of the policy terms respecting notice was not a valid defense. The California law to that effect is plain. (*Norton v. Central Surety & Ins. Co.*, 9 Cal. App. 2d 598, 601, 51 P. 2d 113.)

That the court erred in making the finding under discussion has therefore been demonstrated.

(b) Specification of Error No. 8. The trial court erred in finding that the insurer had not waived the terms in the policy respecting notice of the occurrence of the accident, for the reason that the evidence established such waiver as a matter of law.

In Finding No. 14 (T. 95-96) the court expressly found that no waiver had occurred. A separate specification of error has therefore been made. The arguments applicable to waiver have already been presented.

(c) Specification of Error No. 9. The trial court erred in finding that the insurer was not estopped from asserting that notice of the occurrence of the accident had not been given in accordance with the terms of the policy, for the reason that the evidence established such estoppel as a matter of law.

In Finding No. 14 (T. 95-96) the court expressly found against estoppel. A separate specification of

error has therefore been made. And the arguments applicable to estoppel have already been presented.

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3. THE CONCLUSIONS OF LAW ARE NOT SUPPORTED BY THE FINDINGS.

The above heading has been adopted for convenience in discussing Specification of Error No. 10. It is as follows:

Specification of Error No. 10. The trial court erred in its conclusions of law that plaintiff should have judgment and that defendants should take nothing, for the following reasons: 1. There is no finding that notice of the occurrence of the accident of February 25, 1940, was not given to the insurer in accordance with law; 2. There is no finding that the insurer was prejudiced by default, delay, or defect in notice.

1. It was earlier demonstrated that certain sections of the Insurance Code of California expressed the paramount law. There was no finding that notice was not given in accordance with that paramount law. Appellant therefore submits that the findings as made do not support the said conclusions of law. (T. 92.)

2. There was no finding that the insurer was prejudiced by default, delay, or defect in notice. The necessity of a finding of such character in a case like the present was earlier demonstrated. Again appellant submits that the findings as made do not support the said conclusions of law.

CONCLUSION.

For the several reasons herein stated, it is therefore respectfully submitted that the judgment herein should be reversed.

Dated, Willows, California,
January 7, 1944.

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